



## Final Decree Transition Stakeholder Working Group

---

### FRAMING QUESTIONS – UPDATED FOR 4/12/2022 MEETING

---

**Key Challenge:** Determine if the current statutory structure for the post final decree administration and regulation of water rights is adequate to meet future water policy objectives

#### WHY

---

Over the past ten years, questions have arisen about the future roles of the judiciary, water commissioners, and the DNRC. As some basins in Montana near completion of the adjudication of pre-1973 “existing water rights,” there will be an increased focus and need for administration of all water rights on a source (i.e., existing rights, permits, certificates, water reservations, and compacted federal reserved water rights). Montana needs to clearly define the roles for administration of water rights to ensure a smooth transition to post-adjudication distribution, management, and enforcement roles.

#### ACTION PLAN

---

1. WRD will lead a facilitated stakeholder conversation on the roles and responsibilities of water administration and management after final decree issuance. Beginning in early 2022, stakeholders will begin discussion of these topics:
  - Current and post-adjudication roles and jurisdictions of district courts, water courts, and DNRC;
  - Role of final decrees;
  - Enforcement of final decrees; and
  - Water commissioner training and oversight.
2. The recommendations from these efforts may lead to draft legislation for the 2023 legislative session.

#### CLARIFYING STATEMENTS

---

1. This Working Group scope is to develop recommendations for the cohesive administration and management of adjudicated pre-1973 rights and new permits and changes post final decree.
2. The Working Group should focus on policy recommendations- the Executive legal team will determine if any legal vulnerabilities exist and develop remedies to resolve them (including McCarran Amendment).
  - a. A sideboard for the Working Group’s policy discussion is that Montana maintains the primacy over water rights.

3. Unintended consequences to other sections of the Water Use Act and other areas of water policy will be kept in mind throughout the Working Group discussion and evaluated by the executive legal team after the Working Group develops policy recommendations.
4. There are seven Key Challenges associated with this Comprehensive Review. There will need to be information sharing and coordination between the groups for comprehensive policy development and division of labor. DNRC staff and working group members serving on multiple Working Groups will fill this role.
5. The working group should first make recommendations based on the best policies for the State; funding should be a consideration throughout the discussion, including additional resources needed to implement recommendations.

#### FRAMING QUESTIONS AND INFORMATION

---

These initial framing questions are intended to provide a basis for the stakeholder working group to engage in a broad discussion, thoroughly analyze the issues, identify, and bring forth additional information, and collectively develop recommendations to address the challenges.

#### FRAMING QUESTION #1: FINAL DECREES

---

1. What is the best way for adjudicated pre-1973 rights and new permits and changes (both as certificates of water rights) to be cohesively administered?
2. Are the current statutes and rules adequate to meet that vision?
  - a. Are the current statutory provisions for corrections of mistakes and errors in final decrees adequate?
  - b. What notification process should be used?

#### FRAMING QUESTION #2: ROLE OF THE JUDICIARY

---

1. Are there concerns with the current post-final decree system of judicial administration of water rights? If so:
  - a. Identify concern(s);
  - b. Identify the current statutory and regulatory frameworks and tools available to address those concern(s);
  - c. Identify any additional tools or resources needed to address those concern(s);
  - d. Identify potential statutory, regulatory, and policy solutions; and,
  - e. Evaluate pros and cons of potential solutions.
2. Additional considerations for any potential statutory, regulatory, and policy solutions developed (e.g., overlapping jurisdictions, appointment of judges)?

#### FRAMING QUESTION #3: WATER DISTRIBUTION AND DISPUTES

---

1. How should final decree and post-1973 appropriated water be distributed?
  - a. Are additional rules, statutes and authority needed to better manage and distribute water?
2. What is the role of water commissioners? Should every basin have a water commissioner?
3. Who is responsible for water commissioner management and supervision?
  - a. To whom should water commissioners report (District Court/Agency/Other)?
  - b. How should Water commissioners be hired, trained, and managed?
  - c. How are water commissioners represented in dissatisfied water user complaints?
4. Is the current structure to train, support, and fund water commissioners adequate?
5. What additional tools are needed to support water commissioners?
6. How are water commissioners' records maintained and standardized?
  - a. Should water records be standardized?
  - b. How should they be standardized?

- c. Who should be responsible for maintaining water commissioners' records?
  - d. Should yearly water commissioners' records be maintained locally, centrally, or both?
  - e. Should records be digitized and added to individual water right records?
7. What is the relationship between water commissioners and the District Courts? Is there a need to improve consistency?

#### FRAMING QUESTION #4: WATER COMPLAINTS AND ENFORCEMENT

---

- 1. In what circumstances do stakeholders want water enforcement? Are there certain times of the year or locations where enforcement is more efficient and beneficial?
- 2. Are there additional statutory or administrative remedies needed to enforce water rights?
- 3. Are there additional judicial remedies needed to enforce water rights?
- 4. Are there sufficient mechanisms to allow water users to enforce against other water users for "illegal" water use?
- 5. What role, if any, should water measurement and reporting serve in enforcement?